

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
RAQUEL A. PESCE,
on behalf of herself and all others similarly situated,

10 CIV. 0112

CLASS ACTION COMPLAINT

Plaintiff,

-against-

JUDGE KARAS

MULLOOLY, JEFFREY, ROONEY & FLYNN LLP

Defendant

-----x

Plaintiff, by and through her undersigned attorney, alleges upon knowledge as to herself and her own acts, and as to all other matters upon information and belief, brings this complaint against the above-named defendant and in support thereof alleges the following:

PRELIMINARY STATEMENT

1. Plaintiff brings this action on her own behalf and on behalf of all others similarly situated for damages and declaratory relief arising from the defendant's violation of §1692 *et seq.* of Title 15 of the United States Code, the Fair Debt Collections Practices Act (hereinafter "FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive and unfair practices.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331. This is an action for violation of 15 U.S.C. § 1692.
3. Venue is proper in this district under 28 U.S.C. § 1391(b)(2).

PARTIES

4. Plaintiff Raquel A. Pesce (hereinafter "Pesce") is a resident of the State of New York, Orange County. In October 2009, plaintiff received initial debt collection notices from defendant Mullooly, Jeffrey, Rooney & Flynn LLP.
5. Defendant Mullooly, Jeffrey, Rooney & Flynn is a Domestic Registered Limited Liability Partnership engaged in the business of collecting debts with its principal place of business located in Syosset, New York. Defendant regularly attempts to collect debts alleged to be due another.

CLASS ACTION ALLEGATIONS

6. Plaintiff brings this action as a nationwide class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure (hereinafter "FRCP"), on behalf of herself and all consumers who have received debt collection notices, letters and legal process from the defendant which are in violation of the FDCPA, as of the date of plaintiff's complaint, and their successors in interest (the "Class"). Excluded from the Class is the defendant herein, and any person, firm, trust, corporation, or other entity related to or affiliated with the defendant, including, without limitation, persons who are officers, directors, employees, associates or partners of Mullooly, Jeffrey, Rooney & Flynn.

7. This action is properly maintained as a class action. This Class satisfies all the requirements of Rule 23 for maintaining a class action.

8. The Class is so numerous that joinder of all members is impracticable. Upon information and belief, dozens of persons have received debt collection notices from the defendant which violate various provisions of the FDCPA.

9. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. These common questions of law and fact include, without limitation:

a. Whether the defendant violated various provisions of the FDCPA, including but not limited to 15 U.S.C. §§ 1692e, 1692e(5), 1692e(10), 1692g, 1692g(b), 1692g(a)(2),

1692g(a)(4) and 1692g(a)(5).

b. Whether plaintiff and the Class have been injured by the defendant's conduct;

c. Whether plaintiff and the Class have sustained damages and are entitled to restitution as a result of defendant's wrongdoing and, if so, what is the proper measure and appropriate statutory formula to be applied in determining such damages and restitution; and

d. Whether plaintiff and the Class are entitled to declaratory relief.

10. Plaintiff's claims are typical of the claims of the Class, and plaintiff has no interests adverse or antagonistic to the interests of other members of the Class.

11. Plaintiff will fairly and adequately protect the interests of the Class and has retained experienced counsel, competent in the prosecution of class action litigation.

12. A class action is superior to other methods for the fair and efficient adjudication of the claims herein asserted. Plaintiff anticipates that no unusual difficulties are likely to be encountered in the management of this class action.

13. A class action will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would engender. Class treatment also will permit the adjudication of relatively small claims by many Class members who could not otherwise afford to seek legal redress for the wrongs complained of herein. Absent a class action the Class members will continue to suffer losses of statutorily protected rights as well as monetary damages and if defendant's conduct will proceed without remedy it will continue to reap and retain the proceeds of its ill-gotten gains.

14. Defendant has acted on grounds generally applicable to the entire Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

STATEMENT OF FACTS

15. On or about October 8 and October 15, 2009, defendant did send to the plaintiff initial collection letters. A copy of said letters are annexed hereto as Exhibit A.

16. The October 2009 letters attempted to collect \$12,271.15. The creditor is identified as Colorado Capital Investments, Inc.

17. Defendant received a letter on October 21, 2009 via United States Postal Service Certified Mail which disputed the validity of the debt, disputed that Colorado Capital Investments, Inc. is a creditor of Raquel Pesce and requested verification of the debt in accord with the Decision/Order in Colorado Capital Investments, Inc. v. Villar, 5894/2005, Decided June 4, 2009. Ms. Pesce further requested that an attorney review the file. Exhibit B.

18. Defendant Mullooly, Jeffrey, Rooney & Flynn continuously attempted to collect the disputed debt before providing the consumer with the verification of the debt by filing a Summons and Complaint captioned Colorado Capital Investments, Inc. against Raquel A. Pesce which falsely claimed in its first Paragraph that Colorado Capital Investments Inc. is a Delaware limited liability company, when it is neither a Limited Liability Company nor a Delaware entity.

Exhibit C.

19. Defendant attempts to collect disputed debt by letter and through the court system despite its proven inability to ascertain basic account information, such as the name and address of the

original creditor and account verification nor maintain basic, elementary information concerning the purported Plaintiff it purportedly represents.

20. As a result of defendant's abusive, deceptive and unfair debt collection practices, plaintiff has been damaged.

FIRST CAUSE OF ACTION

21. Each of the above allegations is incorporated herein.

22. Defendant's debt collection attempts violate various provisions of the FDCPA, including but not limited to 15 U.S.C. §§ 1692e, 1692e(5), 1692e(10), 1692g, 1692g(b), 1692g(a)(2), 1692g(a)(4) and 1692g(a)(5) by falsely and deceptively attempting to collect debts it cannot evidence for a phantom plaintiff.

23. As a result of defendant's violations of the FDCPA, plaintiff has been damaged and is entitled to statutory damages, costs and attorney's fees.

WHEREFORE, plaintiff respectfully requests that the Court enter judgment as follows:

- a) Declaring that this action is properly maintainable as a class action and certifying plaintiff as Class representative;
- b) Awarding plaintiff statutory damages;
- c) Awarding class members the maximum statutory damages.
- d) Awarding plaintiff costs of this action, including reasonable attorneys' fees and expenses; and
- e) Awarding plaintiff such other and further relief as the Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38 of the FRCP, plaintiff hereby demands a trial by jury.

Dated: January 7, 2010
Uniondale, New York



Abraham Kleinman (AK-6300)
KLEINMAN LLC
626 RXR Plaza
Uniondale, New York 11556-0626
Telephone (516) 522-2621
Facsimile (888) 522-1692

EXHIBIT A

MULLOOLY, JEFFREY, ROONEY & FLYNN LLP

6851 JERICHO TPKE - STE 220

PO BOX 9036

SYOSSET, NEW YORK 11791-9036

NYC DEPT of Consumer

Affairs License # 1255143

Tel 516-656-5300

Toll Free 888-762-6573

October 8, 2009

RAQUEL A PESCE
58 ELISE DR
MIDDLETOWN NY, 10941 0000

Re: COLORADO CAPITAL INVESTMENTS, INC.
AS ASSIGNEE OF CITIBANK SOUTH DAKOTA
and RAQUEL A PESCE
MJRF File No. 526142

The above creditor has turned over to us for collection your account in the sum of
\$12,271.15.

VALIDATION NOTICE

The amount shown above is the amount owed to the Creditor. Unless you notify us within thirty days after receipt of this notice that the validity of this debt, or any portion of it, is disputed, we will assume that the debt is valid. If within thirty days of your receipt of this notice you notify us in writing that the debt or any portion thereof is disputed we will obtain a verification of the debt or if the debt is founded upon a judgment, we will obtain a copy of the judgment and we will mail to you a copy of such verification or such judgment. Also, upon your written request within thirty days of the receipt of this notice, we will provide you with the name and address of the original creditor if different from the current creditor.

At this time, no attorney with this firm has personally reviewed the particular circumstances of your account.

THIS LETTER IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

If you do not dispute the debt or seek verification thereof, and you do not want the name and address of the original creditor, if different from the above named creditor, and you wish to pay this claim, then contact our office or visit: <https://payment.mjrf.com>.

Very truly yours,

BY:



MULLOOLY, JEFFREY, ROONEY & FLYNN LLP
REFER TO:

JOE VINCENT - (516)656-5340 COLLECTION MANAGER

D4/

MULLOLLY, JEFFREY, ROONEY & FLYNN LLP
 6851 JERICHO TPKE - STE 220
 PO BOX 9036
 SYOSSET, NEW YORK 11791-9036
 Tel 516-656-5300
 Toll Free 888-762-6573

NYC DEPT of Consumer
 Affairs License # 1255143

October 15, 2009

RAQUEL A PESCE
 58 ELISE DR
 MIDDLETOWN NY, 10941 0000

Re: COLORADO CAPITAL INVESTMENTS, INC.
 AS ASSIGNEE OF CITIBANK SOUTH DAKOTA
 and RAQUEL A PESCE
 MJRF File No. **526142**

The above creditor has turned over to us for collection your account in the sum of \$12,271.15.

VALIDATION NOTICE

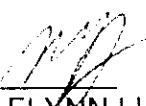
The amount shown above is the amount owed to the Creditor. Unless you notify us within thirty days after receipt of this notice that the validity of this debt, or any portion of it, is disputed, we will assume that the debt is valid. If within thirty days of your receipt of this notice you notify us in writing that the debt or any portion thereof is disputed we will obtain a verification of the debt or if the debt is founded upon a judgment, we will obtain a copy of the judgment and we will mail to you a copy of such verification or such judgment. Also, upon your written request within thirty days of the receipt of this notice, we will provide you with the name and address of the original creditor if different from the current creditor.

At this time, no attorney with this firm has personally reviewed the particular circumstances of your account.

THIS LETTER IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

If you do not dispute the debt or seek verification thereof, and you do not want the name and address of the original creditor, if different from the above named creditor, and you wish to pay this claim, then contact our office or visit <https://payment.mjrf.com>
 Very truly yours,

BY:


 MULLOLLY, JEFFREY, ROONEY & FLYNN LLP
 REFER TO :

FRED BARR (516)656-5369 COLLECTION MANAGER

D4/

Exhibit B

RAQUEL A. PESCE
58 ELIISE DRIVE
MIDDLETOWN, NEW YORK 10941

October 19, 2009

Mullooly Jeffrey Rooney & Flynn LLP
Post Office Box 9036
Syosset, New York 11791-9036

Re: COLORADO CAPITAL INVESTMENTS, INC.
AS ASSIGNEE OF CITIBANK SOUTH DAKOTA
and RAQUEL A PESCE
MJRF FILE No. 526142

Dear Counselors:

1. I dispute that Colorado Capital Investments Inc. is a creditor of mine. Specifically, the claim that I am indebted to Colorado Capital Investments Inc. is false.
2. Please send me verification that Colorado Capital Investments Inc. is my creditor in accord with the Decision/Order in Colorado Capital Investments Inc. v. Villar, 5894/2005, Decided June 4, 2009.
3. Please send me verification of this disputed debt in the amount of \$12,271.15.
4. Please send me the Address of the Original Creditor.
5. Please identify the name of the person who signed the October 8, 2009 collection letter.
6. Please have an attorney review the particular circumstances of this account.

Should you fail to properly evidence that I am indebted to Colorado Capital Investments Inc., I will engage counsel regarding your false claim.

Sincerely,

Raquel Pesce
Raquel A. Pesce

Y-Document 1 Filed 01/07/10 Page

For delivery information visit our website at www.usus.com

Postage	\$	40.44	0341
Certified Fee		\$2.00	06
Return Receipt Fee (Endorsement Required)		\$0.00	Postage Here
Restricted Delivery Fee (Endorsement Required)		\$0.00	
Total Postage & Fees	\$	43.44	10/19/2009

Sales Receipt		
Product Description	Sale Unit Qty	Final Price
SYDSSET NY 11791		\$0.44
Zone-1 First-Class		
Letter		
0.70 oz.		
Certified		\$2.80
Label #:	70072560000306359041	
Customer Postage		\$0.44
Subtotal:		\$2.80
Issue PVI:		\$2.80
44¢ #10	1	\$0.54
Seabiscuit		\$0.54
Envelope		
Total:		\$3.34

Paid by:
MasterCard \$3.34
Account #: XXXXXX6276
Approval #: 019759
Transaction #: 503
23903613669

Order stamps at USPS.com/shop

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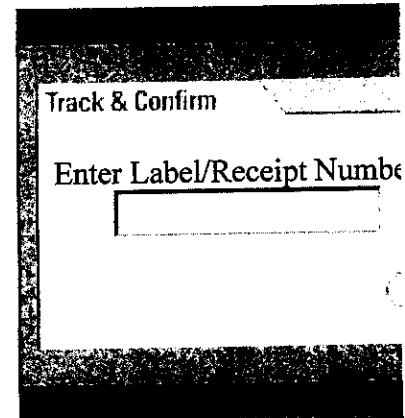
Label/Receipt Number: 7007 2560 0003 0635 9041

Class: First-Class Mail®

Service(s): Certified Mail™

Status: Delivered

Your item was delivered at 12:40 PM on October 21, 2009
in SYOSSET, NY 11791.



Detailed Results:

- Delivered, October 21, 2009, 12:40 pm, SYOSSET, NY 11791
- Arrival at Unit, October 21, 2009, 7:41 am, SYOSSET, NY 11791
- Acceptance, October 19, 2009, 2:22 pm, MIDDLETOWN, NY 10941

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Exhibit C

COUNTY OF ORANGE, STATE OF NEW YORK
COLORADO CAPITAL INVESTMENTS, INC.

Plaintiff

against

RAQUEL A PESCE A/K/A RAQUEL GAUDIO

Defendant's Address:

Defendant(s)

SUMMONS MJRF# 526142

Plaintiff's address:

409 NORTH MAIN
WEATHERFORD, TX 76086

D1 - 58 ELISE DR
MIDDLETOWN, NY 10941
D2 -

The basis of the venue is:

DEFENDANT RESIDES WITHIN THE COUNTY OF ORANGE IN THE GEOGRAPHICAL AREA OF THE JURISDICTION OF THE CITY COURT OF MIDDLETOWN. AND OR CAUSE OF ACTION AROSE WITHIN SAID GEOGRAPHICAL AREA.

TO THE ABOVE NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED

and required to appear in this action in the City Court of the City of MIDDLETOWN, County of ORANGE, State of New York, at the office of the Clerk of said court at 2 JAMES STREET, City of MIDDLETOWN County of ORANGE, New York, by serving an answer* to the annexed complaint upon plaintiff's attorney, at the address stated below, within the time provided by law as noted below.

Upon your failure to so answer, judgment will be taken against you for the relief demanded in the complaint, together with the costs of this action.

DATED: October 29, 2009

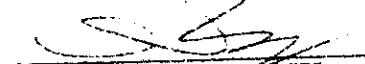
MULLOOLY, JEFFREY, ROONEY & FLYNN LLP Attorneys for Plaintiff
6851 JERICHO TPKE, PO BOX 9036, SYOSSET, NEW YORK 11791-9036 (516)656-5300

NOTE: The law provides that:

- (1) If this summons is served by its delivery to you personally within the County of ORANGE you must answer within TEN days after such service; or
- (2) If this summons is served by delivery to any person other than you personally, or is served outside the County of ORANGE or by publication, or by any means other than personal delivery to you within the County of ORANGE, you are allowed THIRTY days after service is complete within which to answer.

* You need not physically go to the court to serve an answer*

THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION GATHERED WILL BE USED FOR THIS PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.


TIMOTHY F. ROONEY
MULLOOLY, JEFFREY, ROONEY & FLYNN LLP

COUNTY OF ORANGE: STATE OF NEW YORK

COURT INDEX #:

COLORADO CAPITAL INVESTMENTS, INC.

MJRF# 526142

Plaintiff
-against

COMPLAINT

RAQUEL A PESCE A/K/A RAQUEL GAUDIO

Defendant(s)

Plaintiff, by its attorneys, complaining of the defendant(s), upon information and belief respectfully alleges:

1. Plaintiff is a Delaware limited liability company.

2. That the defendant(s) resides in the county in which this action is brought; or that the defendant(s) transacted business within the county in which this action is brought in person or through his agent and that the instant cause of action arose out of said transaction.

3. That the plaintiff's assignor CITIBANK SOUTH DAKOTA and defendant(s) hereto entered into a Revolving Credit Agreement.

4. Plaintiff's assignor duly performed all conditions on its part under the agreement.

5. Defendant(s) defaulted in payment and pursuant to the terms of the agreement now owes a balance of \$12,271.15.

6. The Defendant(s) obligation to CITIBANK SOUTH DAKOTA has been sold and assigned to the Plaintiff herein.

THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION GATHERED WILL BE USED FOR THIS PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

WHEREFORE, plaintiff demands judgement against defendant(s) for the sum of \$12,271.15 with interest from 10/05/09 together with costs and disbursements.

DATED: October 29, 2009

Yours etc,



TIMOTHY F. ROONEY
MULLOLLY, JEFFREY, ROONEY & FLYNN LLP
Attorneys for Plaintiff
6851 JERICHO TPKE- STE 220
PO BOX 9036
SYOSSET, NY 11791-9036
516-656-5300

cityn10/FB